



California Fair Political Practices Commission

August 17, 1987

Michael J. Goldstein
California Community Dispute Services
445 Bush Street, Second Floor
San Francisco, CA 94108

Re: Your Request for Informal
Assistance
Our File No. I-87-184

Dear Mr. Goldstein:

You have written requesting advice regarding your participation as a member of the Dispute Resolution Advisory Council. I have previously forwarded to you a copy of our Advice Letter to Pat Towner, No. A-87-038, which dealt with somewhat similar circumstances. This letter more directly responds to your question and includes the additional facts provided by you in our telephone conversation of July 30, 1987.

At this time, you have not presented us with facts regarding any pending decision before the advisory council. Consequently, our advice is general in nature, and we have elected to treat your letter as one requesting informal assistance.^{1/}

QUESTION

Are there any prohibitions under the Political Reform Act^{2/} on your full participation as a member of the Dispute Resolution Advisory Council?

^{1/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Adm. Code Section 18329(c)(3), copy enclosed.)

^{2/} Our advice is confined to the provisions of the Political Reform Act. You may also wish to seek advice from your agency's counsel regarding Government Code Section 1090.

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CONCLUSION

You must disqualify yourself from participation in any advisory council decisions which will have a reasonably foreseeable material financial effect on your employer, California Community Dispute Services.

FACTS

You are the executive director of California Community Dispute Services in San Francisco, a position which you have held for more than three years. As executive director, you are responsible for the organization's fundraising and planning efforts, fiscal and personnel policy development, and management tasks. California Community Dispute Services is a nonprofit tax-exempt organization.

On January 12, 1987, you were appointed to the Dispute Resolution Advisory Council. The council was established by recent legislation (Chapter 1313, Stats. 1986), and its responsibilities are defined in Business and Professions Code Section 465, et seq. Generally, the legislation seeks to encourage the establishment of dispute resolution programs in local communities as alternatives to use of the courts. The advisory council is established within the Department of Consumer Affairs and consists of seven appointees, of which you are one. The legislation establishing the advisory council provides:

... At least four persons appointed to the advisory council shall be active members of the State Bar of California, and at least four persons appointed to the advisory council shall have a minimum of two years of direct experience in utilizing dispute resolution techniques....

Business and Professions
Code Section 467(b).

The duties of the advisory council include the adoption of rules and regulations to effectuate the purposes of the program, including, but not limited to, guidelines to be used by the programs for the recruitment and training of persons conducting dispute resolution, and provisions for periodic monitoring and evaluation of the programs funded pursuant to this chapter. The council also is responsible for establishing guidelines to evaluate the performance of participating programs.

Programs are to be selected for funding by counties, utilizing funds generated by a \$1.00 increase in certain civil litigation filing fees.

(a) A program funded pursuant to this chapter shall be operated pursuant to contract with the county and shall comply with all of the requirements of this chapter and the rules and regulations of the advisory council.

(b) Counties may establish a program of grants to public entities and nonpartisan nonprofit corporation for the establishment and continuance of programs to be operated under the requirements of this chapter and the standards developed by the advisory council....

Business and Professions Code
Section 476.1(a) and (b).

ANALYSIS

The Political Reform Act (the "Act")^{3/} provides that no public official shall make, participate in making, or use his official position to influence a governmental decision in which he has a financial interest. As a member of the advisory council, you are a public official.^{4/} The decisions of the advisory council are governmental; for example, the adoption of rules and regulations is "quasi-legislative administrative action" under Section 82002. (Regulation 18202.)

Consequently you may not make or participate in making advisory council decisions in which you have a financial

^{3/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

^{4/} Although positions on the advisory council are unsalaried and it is denominated "advisory," it clearly makes governmental decisions because it is specifically empowered to adopt rules and regulations. Consequently, advisory council members are public officials within the meaning of the Act. (Section 82048; see Comm'n. on Calif. State Gov't. Org. & Econ. v. FPCC (1977) 75 Cal.App.3d 716.)

interest. You have a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on yourself, a member of your immediate family, or on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(c).

California Community Dispute Services is a nonprofit tax-exempt organization. Therefore, it is not a "business entity" within the meaning of the Act. (Section 82005.) However, you are the paid executive director and, therefore, receive payments other than reimbursement for expenses. As a result, California Community Dispute Services is a source of income to you. (Sections 82030 and 87103(c).) Consequently, you must disqualify yourself from any advisory council decisions which will have a reasonably foreseeable material financial effect on California Community Dispute Services which is distinguishable from the effect on the public generally.

Decisions affecting the funding of California Community Dispute Services would have effects distinguishable from those on the public generally. However, if the provisions of either subdivision (c) or subdivision (d) of Regulation 18703 are applicable, the result could be different. That regulation provides as follows:

(c) An industry, trade or profession constitutes a significant segment of the public if the statute, ordinance or other provision of law which creates or authorizes the creation of the official's agency or office contains a finding and declaration, including an express reference to Section 87103 of the Government Code, to the following effect:

The Legislature [or other authority] declares that the individual[s] appointed to the office of _____ is [are] intended to represent and further the interest of the [specified industry, trade or profession], and that such representation and furtherance will ultimately serve the public

interest. Accordingly, the Legislature [or other authority] finds that for purposes of persons who hold such office the [specified industry, trade or profession] is tantamount to and constitutes the public generally within the meaning of Section 87103 of the Government Code.

(d) In the absence of an express finding and declaration of the type described in subsection (c) of this section, such an industry, trade or profession constitutes a significant segment of the public generally only if such a finding and declaration is implicit, taking into account the language of the statute, ordinance or other provision of law creating or authorizing the creation of the agency, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.

Regulation 18703.

In this instance, as in the Towner Advice Letter previously forwarded to you, subdivision (c) of Regulation 18703 does not apply. In recently adopting the statutes establishing and governing the advisory council, the Legislature did not make the express findings set forth in that subdivision. Nor can we conclude that such findings are implicit in the statute, as provided for by subdivision (d).^{5/} Consequently, we must conclude that effects upon dispute resolution centers generally do not constitute an effect upon a significant segment of the general public within the meaning of Section 87103 and Regulation 18703.

Therefore, you will be required to disqualify yourself as to those decisions of the advisory council which will have a reasonably foreseeable material financial effect on your source of income. For guidance on this point, we refer to Regulation 18702(b)(3). The pertinent provisions of that regulation are as follows:

^{5/} The statute does not require that employees of dispute resolution programs be included in the membership of the advisory council. In fact, it does not even require membership from representatives of such programs. The statute merely requires membership of persons with experience in dispute resolution techniques. (Business and Professions Code Section 476(b).)

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(3) Whether, in the case of a source of income as defined in Government Code Section 87103(c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made:...

(B) There is a nexus between the governmental decision and the purpose for which the official receives income; or....

(D) If the source of income is not a business entity, the decision will have a significant effect on the source.

Regulation 18702(b)(3)(B) and (D).

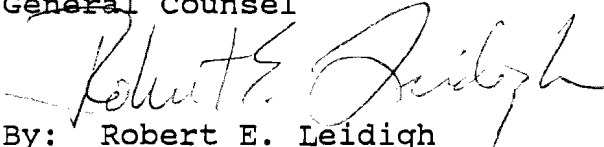
Since your position as executive director involves responsibility for securing grants for California Community Dispute Services, you may not use your governmental position to further that goal because there would be a "nexus" between the governmental decision and the purpose for which you receive income. (See Advice Letter to Linda Best, No. A-81-032, copy enclosed.) In addition, you must disqualify yourself from advisory council decisions which will have a reasonably foreseeable and significant effect upon California Community Dispute Services.

As the advisory council begins its work and the nature of its decisions becomes clearer, you may wish to contact us again for more specific advice. However, it seems clear from the statute establishing the advisory council that you will need to be cautious regarding your involvement in establishment of funding guidelines. (Business and Professions Code Section 471.) Those guidelines may influence whether or not your program is funded or whether a competing program is funded.

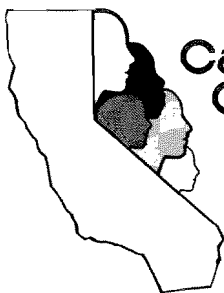
If you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh
Enclosures



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Michael J. Goldstein
Executive Director

June 26, 1987

Ms. Diane Griffiths
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95804

Dear Ms. Griffiths:

On January 12, 1987, pursuant to Statutes of 1986, Chapter 1313, I was appointed to the Dispute Resolution Advisory Council by Assembly Speaker Willie L. Brown, Jr. The Council's responsibilities are defined in chapter 1313 of 1986 and in chapter 28 of 1987 (urgency legislation recently signed by the Governor). The Council is charged with adopting rules and regulations to effectuate the establishment of local dispute resolution programs statewide. The statewide guidelines will serve as the criteria upon which counties opting to participate in the program will select local dispute resolution programs. The selected programs will receive grants from revenues generated by new civil filing fees in municipal and superior courts.

I am the Executive Director of the California Community Dispute Services organization in San Francisco, a position I have held for more than three years. As Executive Director, I am responsible for the organization's fund-raising and planning efforts, fiscal and personnel policies development and management tasks.

Ms. Diane Griffiths

June 26, 1987

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The registry chapter mandates the appointment to the Council of at least four persons with a minimum of two years of direct experience in utilizing dispute resolution techniques. My long-time involvement with and personal knowledge about the management and operation of local dispute resolution programs were the key factors in my appointment to this Council.

I would appreciate guidance from your office on whether, because of my position as a director of a local dispute resolution program, there are any prohibitions on my full participation as a member of the Dispute Resolution Advisory Council.

Thank you very much for your attention to this matter.

Sincerely yours,

CALIFORNIA COMMUNITY DISPUTE SERVICES



Michael J. Goldstein
Executive Director

/vl

cc: Shelly Bates
Special Assistant to the
Speaker of the Assembly

Mary Alice Coleman
Staff Counsel
Department of
Consumer Affairs



California Fair Political Practices Commission

July 2, 1987

Michael J. Goldstein
California Community Dispute Services
445 Bush Street, Second Floor
San Francisco, CA 94108

Re: 87-184

Dear Mr. Goldstein:

Your letter requesting advice under the Political Reform Act was received on June 29, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:jaj